

## REMARKS

According to the January 2, 2009 Office Action,

- claims **7-56** are pending;
- claims **15-35** and **44-53** are withdrawn from consideration; and
- claim **7-14, 36-43**, and **54-56** are rejected.

Applicant notes that claims **30-35** were canceled in Applicant's Paper of July 10, 2008. Accordingly, these claims are neither pending nor withdrawn from consideration.

With this Amendment, Applicant has amended independent claims **7** and **36**, has amended dependent claims **8-9, 12-14, 37-38, 40-43**, and **54-55**, and has added new dependent claims **57-64** to recite particular embodiments that Applicant, in Applicant's business judgment, has currently determined to be commercially desirable. Applicant has canceled dependent claims **10-11, 39**, and **56**. Applicant will pursue the subject matter of the previously presented and canceled claims in one or more continuing applications.

Accordingly, the following claims are under consideration:

- Independent claims **7** and **36**.
- Dependent claims **8-9, 12-14, 37-38, 40-43, 54-55**, and **57-64**.

### **I. DOUBLE PATENTING REJECTION**

At paragraph 1, page 2 of the Office Action, the Examiner makes a statutory double patenting rejection. The Examiner fails to raise a proper rejection in that the Examiner never indicates a second patent and/or application against which the rejection is being raised. Applicant draws the Examiner's attention to MPEP 804 (I), which reads in part:

#### **I. INSTANCES WHERE DOUBLE PATENTING ISSUE CAN BE RAISED**

A double patenting issue may arise between two or more pending applications, or between one or more pending applications and a patent.

Applicant respectfully requests withdrawal of the rejection.

### **II. REJECTION UNDER 37 CFR 1.75**

At paragraph 2, page 2 of the Office Action, the Examiner objects to claims **36-43** under 37 CFR 1.75 as being a substantial duplicate of claims **7-14**. In particular, the Examiner states in part:

When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, **it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim.** (Bold emphasis added).

The Examiner has not indicated that any of claims **7-14** and **36-43** are allowed. Accordingly, Applicant cannot ascertain the basis of the Examiner's objection. Accordingly, Applicant respectfully requests withdrawal of the objection.

### **III. REJECTION OF THE CLAIMS UNDER 35 U.S.C. § 112**

At paragraphs 1-2, page 2 of the Office Action, the Examiner rejects claims **13** and **42** under 35 U.S.C. § 112, second paragraph, as being indefinite based on the phrase "... due to a cheapest to deliver ...."

The Examiner fails to establish a *prima facie* case of indefiniteness. In particular, cheapest to deliver is a term well known in the art. In addition, the term is described in the Specification. See, for example, the paragraph beginning at page 10, line 22; the paragraph beginning at page 12, line 29; and the paragraph beginning at page 14, line 26.

Nonetheless, Applicant has amended claims **13** and **42** in view of the amendments made to claims **7** and **36**. Applicant respectfully submits that the rejection of claims **13** and **42** is now moot in view of the amendments.

### **IV. REJECTION OF THE CLAIMS UNDER 35 U.S.C. § 102**

At paragraphs 4-5, pages 3-5 of the Office Action, the Examiner rejects claims **7-13**, **36-42**, and **56** under 35 U.S.C. § 102(b) as being anticipated by Nations, U.S. Patent Application Publication No. 2002/0138299 (hereinafter Nations).

Amended independent claim **7** recites in part:

*wherein a buyer of the futures contract agrees to at least (i) buy a first asset underlying the futures contract and (ii) buy a second asset underlying the futures contract at an expiration of the futures contract;*

*wherein a seller of the futures contract agrees to at least (i) sell the first asset underlying the futures contract and (ii) sell the second asset underlying the futures contract at the expiration of the futures contract;*

*wherein the first asset comprises a fixed income bond;  
wherein the second asset class comprises a credit default swap issued on the fixed income bond;*

*wherein the futures contract specifies:*

- (i) a quantity of the fixed income bond to be delivered at the expiration of the futures contract, and
- (ii) a quantity of the credit default swap to be delivered at the expiration of the futures contract.

Similarly, amended independent claim **36** recites in part:

*wherein a buyer of the futures contract agrees to at least (i) buy a first asset underlying the futures contract and (ii) buy a second asset underlying the futures contract at an expiration of the futures contract;*

*wherein a seller of the futures contract agrees to at least (i) sell the first asset underlying the futures contract and (ii) sell the second asset underlying the futures contract at the expiration of the futures contract,*

*wherein the first asset comprises a fixed income bond issued by a first government,*

*wherein the second asset comprises a fixed income bond issued by a second government,*

*wherein the futures contract specifies:*

- (i) a quantity of the fixed income bond issued by the first government to be delivered at the expiration of the futures contract, and
- (ii) a quantity of the fixed income bond issued by the second government to be delivered at the expiration of the futures contract.

The cited portions of Nations have not been shown to disclose such limitations of claims **7** and **36**. Referring to amended/new dependent claims **8-9, 12-13, 37-38, 40-42**, and **57-64**, because these claims depend from independent claims **7** and **36**, the cited portions of Nations have not been shown to disclose all the limitations of these claims for at least the same reasons as claims **7** and **36**.

## V. REJECTION OF THE CLAIMS UNDER 35 U.S.C. § 103

At paragraphs 6-8, pages 5-6 of the Office Action, the Examiner rejects claims **14** and **43** under 35 U.S.C. § 103(a) as being unpatentable over Nations in view of Gershon, U.S. Patent No. 7,315,838, and rejects claim **54** and **55** under 35 U.S.C. § 103(a) as being unpatentable over Nations in view of Pine et al., U.S. Patent No. 7,212,997.

Because claims **14, 43, 54** and **55** depend from independent claims **7** and **36**, the cited portions of these references have not been shown to disclose all the limitations of claims **14, 43, 54** and **55** for at least the same reasons set forth above for claims **7** and **36**.

**VI. AUTHORIZATION FOR EMAIL COMMUNICATION**

Recognizing that Internet communications are not secure, Applicant hereby authorizes the USPTO to communicate with any authorized representative concerning any subject matter of this application by electronic mail. Applicant understands that a copy of these communications will be made of record in the application file.

**VII. CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance. Applicant requests that the application be passed to issue in due course. The Examiner is urged to telephone the undersigned representative at the number noted below if it will advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance.

Respectfully submitted,

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Date

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